



Legislative Bulletin.....January 4, 2007

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H.Res. 6—Adopting Rules for the One Hundred Tenth Congress

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Order of Business: The 110th Congress is scheduled to begin with a quorum call and the election of the Speaker on Thursday, January 4, 2007. Consideration of the rules package (H.Res. 6) follows soon after in the order of business. At this point, since the rules have yet to be adopted, the House operates under “general parliamentary law,” and precedent generally suggests that means operating under the rules of the preceding Congress.

H.Res. 6 is scheduled for consideration subject to a structured rule (H.Res. 5). The rule provides for the rules package to be essentially divided into five parts (by title) and considered separately. This approach allows the Majority to consider, debate, and vote on each title (ethics, fiscal responsibility, civility, etc.) on its own—without a motion to commit on each title. The Minority will only have one such motion to offer an alternative proposal.

Background: Article I, Section 5, Clause 2 of the U.S. Constitution states that “each House may determine the Rules of its Proceedings.” Accordingly, at the start of every new Congress, the House of Representatives adopts new rules, normally the standing rules of the preceding Congress with various changes. (As a continuing body with only a third of its Members elected every two years, the Senate does not pass new rules each new Congress.)

Summary of the Major Provisions:

Note: H.Res. 6 treats Members, Delegates, and Resident Commissioners the same. For purposes of this brief, unless otherwise noted, any mention of House Rules’ application to Members also covers Delegates and Resident Commissioners.

Title I—Adoption of the Rules of the 109th Congress

- Adopts the Rules of the 109th Congress, *as amended by the resolution*, for the 110th Congress.

Title II—Ethics

- Amends the official code of conduct to prohibit Members from influencing an employment decision or employment practice of any private entity by taking, withholding, or threatening official action. This provision is targeted at ending the so-called **K Street Project**. It should be noted that it is already illegal to condition any official act on something else.

- Amends the **gift ban** to prohibit Members and staff from accepting gifts from a registered lobbyist or from private entities that retain or employ registered lobbyists—regardless of current dollar thresholds. As with the current rules, the restriction would not apply if the Member or staff pays fair market value or if the giver is a relative or a long-standing personal friend. Tickets to sporting events and entertainments events would be valued at the face value of the ticket.
- Provides that the following travel related rules apply to any Member or staff and stipulates that these provisions take effect on March 1, 2007.
- Expands the current ban on reimbursement for privately funded travel from lobbyists to also include a ban on travel reimbursement by private entities that employ a lobbyist.
- Provides that a reimbursement (including payment in kind) received directly from an institution of higher learning (as defined in the Higher Education Act) *is permissible under the rules and thus not considered a gift*.
- Provides that attendance at or participation in a one-day event is permissible under the rules, and also states that a two-night stay may be permitted by the Ethics Committee (on a case-by-case basis) when its determined to be practically required to participate in the one-day event.
- Prohibits travel related reimbursements for any trip on which the traveler is accompanied on any segment by a registered lobbyist or agent of a foreign principal (both are hereafter referred to as “registered lobbyist”). *Provides an exception when the source of the reimbursement is an institution of higher learning.*
- Prohibits travel related reimbursements for any trip that is financed in whole or part by a private entity that retains or employs a registered lobbyist, unless the lobbyist’s involvement in the trip planning is considered de minimis under Ethics Committee standards.
- Requires Members and staff, et al, before accepting travel otherwise permitted under House rules, to provide the House Ethics Committee a written certification of the following from the source of the trip:
 - the trip will not be financed in any part by a registered lobbyist;
 - that the source either a) does not retain or employ a registered lobbyist, or b) *is an institution of higher learning*, or c) certifies that the trip meets the relevant Ethics Committee standards regarding de minimis lobbyist involvement and specifically details the extent of that involvement;
 - that the source will not accept any funds from another source that are earmarked (directly or indirectly) to finance any aspect of the trip; and
 - that the traveler will not be accompanied on any segment of the trip by a registered lobbyist.
- Requires Members and staff, after the Ethics Committee has promulgated the relevant regulations, to obtain prior approval from the Ethics Committee for the trip.
- Changes the current reporting requirement for allowable travel from 30 days to 15 days after the travel has been completed to disclose to the Ethics Committee the expenses to be reimbursed.

- Prohibits Members and staff from using personal funds, official funds, or campaign funds for a flight on a non-governmental airplane that is not licensed by the FAA to operate for compensation or hire.
- Directs the Ethics Committee, within 45 days after adoption of these rules and at annual intervals thereafter, to develop and revise:
 - a) guidelines on judging the reasonableness of an expense or expenditure (under Clause 5 of rule XXV) including factors that may establish a connection between a trip and official duties, the reasonableness of an amount spent by a sponsor, the relationship between an event and an officially connected purpose, and a direct and immediate relationship between a source of funding and an event; and
 - b) regulations describing the information it will require individuals (subject to this clause) to submit to the Ethics Committee in order to obtain the prior committee approval for travel covered by this clause.
- Adds to the existing reporting requirements on allowable travel a requirement to submit to the House Ethics Committee a description of the meetings and events attended during the travel.
- Requires **annual ethics training** by the Ethics Committee. Staff would be required to file a certification on January 31 of each year that he or she had received such training within the past year—this requirement does not appear applicable to Members and thus it is unclear how it would be enforced.
- Renames the following committees:

<i>From:</i>	<i>To:</i>
Committee on Education and Workforce	Committee and Education and Labor
Committee on International Relations	Committee on Foreign Affairs
Committee on Resources	Committee on Natural Resources
Committee on Government Reform	Committee on Oversight and Government Reform
Committee on Science	Committee on Science and Technology

- Reserves the first ten bill numbers (H.R. 1-10) for assignment by the Speaker.

Title III—Civility

- Prohibits roll call votes from being held open for “the sole purpose of reversing the outcome” of a given vote. However, the resolution does not define sole purpose, nor does it provide the Minority with any method to enforce this new rule.
- Requires that in conducting **conferences with the Senate**: 1) meetings only occur when the House manager has been notified and given a reasonable opportunity to attend; 2) that all provisions on which the House and the Senate disagree be open for discussion at any meeting; and 3) that conferees be given an opportunity to re-sign (and thus reconsider) a conference agreement if it changes in any way. The resolution further requires that House managers be given a time and place to access a copy of the final conference agreement and affix their signatures. Finally, a conference report could not be considered by the House if it differs in any way from the language agreed to by the conferees.

Title IV—Fiscal Responsibility

- Prohibits a budget resolution from being considered that includes **reconciliation instructions** to change existing law that would either reduce the surplus or increase the deficit over one, five, or ten years. Given that all legislation affecting revenues is scored statically (without regard for increased revenues generated from expected economic growth), this change would make it far more difficult to consider budgets that cut taxes *or make current tax law permanent*.
- Does *not* repeal the requirement in House Rules that imposes a higher hurdle (three-fifths of the Members voting) for raising income tax rates. However, the current rule could still be waived by the Rules Committee.
- Ensures that most of the crucial **points of order** under the Budget Act apply to unreported bills. Under current law, such points of order only apply to measures “as reported.” This change closes a loophole that many conservatives have historically sought to close.
- Requires that all bills or joint resolutions considered by the House include either a list of **earmarks** (“congressional earmarks, limited tax benefits, and limited tariff benefits”) in the text or committee report and the name of the Member requesting each earmark *or* a statement that no such earmarks are included. This provision would cover unreported bills, managers’ amendments, and conference reports—but not suspensions—and could not be waived. The resolution defines a congressional earmark as:

A provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to any entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

The resolution defines a limited tax benefit as:

Any revenue-losing provision that provides a federal tax deduction, credit, or exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code...and contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision, or...any federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code.

The resolution defines a limited tariff benefit as “a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.”

In addition, the bill requires every Member requesting an earmark to provide a written statement to the chairman and ranking member of the committee with jurisdiction that includes the following information: 1) the requesting Member’s name, 2) the name and address of the intended recipient or the intended location of the activity, 3) the purpose, and 4) a certification that the Member or spouse has no financial interest in the earmark. These statements would be maintained and open to public inspection *if* an earmark was included in reported bill or conference report (not unreported bills, manager’s amendments, etc.) Finally, the resolution amends the Code of Conduct to prohibit conditioning the inclusion of an earmark on any vote cast by a Member.

This earmark reform language essentially builds upon the resolution (H.Res. 1000) passed in the 109th Congress to formally close most of the loopholes that were identified early on—most of which were practically addressed by the so-called Boehner protocol. Earmarks included in bills on the suspension calendar would continue to be exempt from the reforms.

- Provides a **PAYGO** (“pay as you go”) point of order in the House by prohibiting the consideration of any direct spending *or tax legislation* that would have the net affect of increasing the deficit or reducing the surplus over one, five, and ten years. This reform is merely a change to House Rules—it is not a statutory change that would bring back the PAYGO requirements in effect from 1990-2002, which included a sequester or an across-the-board cut as an enforcement mechanism.

In recent years, many conservatives have been concerned with efforts to restore PAYGO rules. For instance, the Family Budget Protection Act (FBPA)—consensus RSC budget process reform language introduced in the past two Congresses—does not include either PAYGO rule or statutory changes. It is important to note that even when PAYGO was in effect that it never worked. When the time came for a sequester, Congress always tampered or ignored PAYGO to ensure that new spending would not have to be paid for. No PAYGO sequester ever occurred. In addition, PAYGO only applies to new tax and spending policies and does nothing to control the exploding costs of current entitlements—namely Social Security, Medicare, or Medicaid. Accordingly, FBPA included a cap on all entitlements (outside of Social Security) so that Congress would begin to control the cost of current spending.

Finally, PAYGO treats new tax and spending policies differently because current law or “the baseline” assumes that all spending will continue at current rates into the future (adjusted for inflation) even if discretionary or set to expire, whereas low tax rates scheduled to sunset are not expected to continue at such levels. As a result, a bill to extend the Bush tax cuts or make them permanent would be subject to a PAYGO point of order as a new reduction in revenues that either increases the deficit or reduces the surplus.

Title V—Miscellaneous

- Provides for the consideration of five measures—*none of which have been introduced yet*. This “**rule within a rule**” strategy allows the Democratic Majority to bypass rule votes on five of their key “100 Hour agenda” measures (minimum wage increase, embryonic stem cell research funding, 9/11 recommendations, and negotiating authority for the Secretary of HHS with regard to drug prices). Each rule within a rule waives all points of order lying against each prospective legislation, provides for three hours of debate (equally divided), and allows for no amendments with one motion to recommit.
- Allows the Committee on Oversight and Government Reform to adopt a rule authorizing the taking of **depositions** by a Member or *counsel/staff* of the Committee. The provision requires that the Minority Members and staff of the Committee be given “equitable treatment” with regard to notice and opportunity to participate.
- Excuses the **Rules Committee** from having to include the outcome of recorded votes in committee (and the names of Members voting for or against) in the contents of committee reports.
- **Deems the House-passed budget** (H.Con.Res. 376) from the 109th Congress as effective until the adoption of a new concurrent budget resolution in the 110th Congress. The resolution also requires the Chairman of the Budget Committee to submit 302(a) allocations into the Congressional

Record based on the deemed budget's spending levels. In addition, the resolution retains the "point of order protection," negotiated two years ago by the RSC to ensure that appropriations bills leave the House floor within budget or else receive an extra vote on fiscal grounds.

- Allows the Speaker (or the Chairman of the Committee on the Whole) to declare an emergency recess subject to the call of the chair when notified of an imminent threat to the House.
- Clarifies that references to Section 306 of the Congressional Budget Act shall be construed as references to joint resolutions. Section 306 bars consideration of "any bill, resolution, amendment, motion, or conference report" dealing with any matter within the jurisdiction of the Budget Committee. This clarification, included in previous rule packages, ensures that a budget point of order does not lie against a "self-executing rule" issued by the Rules Committee to bring a bill that exceeds the budget into compliance. Normally such a fix is requested by the Budget Committee itself.
- Clarifies that points of order under Section 303 of the Congressional Budget Act shall be determined on the basis of the text made available for floor consideration. Section 303 bars consideration of certain spending bills until the annual budget resolution is adopted. This clarification, included in previous rules packages, aligns Section 303 with the rest of the Budget Act so that a point of order does not lie against a bill "as reported" from committee when it exceeds the budget and then is brought into compliance prior to floor consideration.
- Bars former Members of Congress and spouses who are now registered lobbyists from using the House **exercise facilities**.

Committee Action: None.

Cost to Taxpayers: None.

Does the Resolution Expand the Size and Scope of the Federal Government?: No.

Does the Resolution Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

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